Supreme Court, U. S.
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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1979

No. 79-784

WILLIAM B. GROVER,
Petitioner,

vs.

COUNTY OF NAPA,

PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals
For the Ninth Circuit

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

William B. Grover, the Petitioner herein, prays that a writ of certiorari issue to review the judgment of Circuit Court of Appeals for the Ninth Circuit entered in the above-entitled case on June 5, 1979.

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Ninth Circuit is unreported and is printed in Appendix A hereto. The mandate of the Circuit Court of Appeals for the Ninth Circuit is printed in Appendix A attached hereto.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on June 5, 1979. The jurisdiction of the Supreme Court is invoked under the Rules of Bankruptcy Procedure promulgated by the United States Supreme Court.

QUESTIONS PRESENTED

1. Under the Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court, does a letter written to a Trustee in Bankruptcy qualify as a proof of claim under said Rules.

2. Does the writing or sending of such a letter to a trustee in bankruptcy comply with the rules necessary to the filing of a proof of claim under the Rules of Bankruptcy Procedure.

STATUTE INVOLVED

Section 57 of the Bankruptcy Act (11 U.S.C. 93), sets forth in detail the law pertaining to the filing of creditors claims in a bankruptcy proceeding. A complete text of the appropriate provisions of said statute is an appendix to which reference is made.

The foregoing Federal Rule on proof and allowances of claims is further subject to the Rules of Bankruptcy Procedure promulgated by the Supreme Court of the United States and those rules are in an appendix to which reference is made.

STATEMENT OF CASE

Franciscan Vineyards filed a petition under Chapter XI of the Bankruptcy Act on May 15, 1975, and thereafter was adjudicated a bankrupt on July 22, 1975. William B. Grover, Petitioner herein, is the duly appointed, qualified and acting Trustee of that bankrupt estate.

That soon after adjudication in bankruptcy, a notice of the First Meeting of Creditors was served on the bankrupt's creditors setting forth the date of the First Meeting of Creditors and the last day for filing claims in these proceedings. This notice was served upon the County of Napa. This notice prescribes the procedure for filing a proof of claim with the Court. The last day for filing proof of claim in this bankruptcy proceeding expired on February 21, 1976.

On December 11, 1975, the County of Napa, through its tax collector, wrote a letter to William B. Grover, the Petitioner herein, enclosing two tax bills for the bankrupt.

That no proof of claim was filed with the Bankruptcy Court or with the Trustee prior to the expiration of the filing date, to wit, February 21, 1976. The only notice of any potential claim was the letter of December 11, 1975.

Thereafter, on July 21, 1976, approximately five months after the time had expired for filing a proof of claim, the County of Napa filed an application for leave to file a claim. The application was set for hearing on August 12, 1976, testimony was elicited, evidence received and briefs filed with the Bankruptcy Court. Thereafter on October 27, 1976, the Bankruptcy Court entered an order denying the County's request.

The County of Napa appealed to the United States District Court, the matter was brifed, orally argued and on April 19, 1977, the District Court entered its order reversing the Bankruptcy Court granting permission to the County of Napa to file an amended Proof of Claim.

The Circuit Court of Appeals for the Ninth Circuit did thereafter render its opinion with the mandate being issued on June 5, 1979, wherein the order of the United States District Court was affirmed.

REASONS FOR GRANTING WRIT

Your petitioner contends that the United States Circuit Court of Appeals for the Ninth Circuit has misinterpreted and misapplied the Rules of Bankruptcy Procedure requiring the filing of a proof of claim in a bankruptcy proceeding. The United States Supreme Court has adopted the rules governing the practice in the Bankruptcy Courts in these United States. Those rules are direct and concise and require that the filing of a proof of claim in a bankruptcy estate be done in accordance with those rules, to wit, the filing of a claim with the court handling the bankruptcy case, showing the existence, nature and amount of the debt.

The Circuit Court of Appeals for the Ninth Circuit has wrongly applied its decision in *Sun Basin Lumber Co. v. United States,* 432 F.2d 48, because in that case there was a proceeding in the court itself establishing the existence, nature and amount of their claim.

Further, the judgment in the instant case is not supported in other circuits, and not necessarily supported by the United States Supreme Court. In the case of *Fyne v. Atlas Supply Co.,* 245 F.2d 107, the United States Circuit Court for the Fourth Circuit has held that mere knowledge on the part of a trustee in bankruptcy was an insufficient basis for filing an amended claim. Similarly, the United States Court of Appeals for the Eighth Circuit has required in the case of *In re Uhlenhopp,* 508 F.2d 412, that there must be something on file with the Bankruptcy Court to apprise that court of the existence, nature and amount of the claim.

Because of the differences of opinion within the various circuits, it is important and necessary to the trustees and receivers in bankruptcy that there be a uniform rule on the requirements of the filing of a proof of claim in a bankruptcy proceeding.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

August 31, 1979

Respectfully submitted,

PHILIP M. ARNOT
Attorney for Petitioner

(Appendices Follow)

Appendices

APPENDIX A

United States Court of Appeals
For the Ninth Circuit

[Filed May 11, 1979]

In re:
Franciscan Vineyards, Inc.
Bankrupt.

County of Napa,
Plaintiff-Appellee,
vs.
Franciscan Vineyards, Inc.
Defendant,
William B. Grover, Trustee,
Appellant.

No. 77-2025

Opinion
Appeal from the United States District Court
for the Northern District of California

Before: Browning and Wallace, Circuit Judges, and Curtis,* District Judge

Per Curiam:

The trustee in bankruptcy appeals from a judgment entered by the district court, ordering that the County of Napa (County) be permitted to file an amended proof of claim in bankruptcy after the six-month period provided by section 57(a), (n) of the Bankruptcy Act, as amended, 11 U.S.C. § 93(a), (n). The trustee raises two objections

*Honorable Jesse W. Curtis, United States District Judge, Central District of California, sitting by designation.

to the district court's order: that the letter sent by the County to the trustee was insufficient to qualify as a proof of claim such that it could be amended, and that the sending of such a letter to the trustee does not qualify as a filing of a proof of claim. We reject both of these contentions and affirm.

The facts are not in dispute. On May 15, 1975, Franciscan Vineyards filed a petition under Chapter 11 of the Bankruptcy Act, as amended. On July 22, 1975, Franciscan Vineyards was adjudicated a bankrupt; the appellant here was thereafter appointed trustee of the bankrupt estate. The date for the first meeting of creditors was set for August 21, 1975. The last day for filing claims was, therefore, February 21, 1976.

Although the County did not file a formal proof of claim with either the referee or the trustee, it did send a letter, dated December 11, 1975, to the trustee, enclosing two tax bills.[1] The trustee received the letter, but did not forward

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[1]The text of the County's letter was as follows:

December 11, 1975

Mr. William B. Grover

. . . .

Dear Mr. Grover:

I have enclosed two tax bills for Assessor's Parcel #30-070-10. These were originally mailed to Franciscan Vineyards, P.O. Box 407, Rutherford, California, which is the address of record. They were returned to our office by the new corporation.

The assessments are against the old Franciscan Vineyards, and we understand you are handling their affairs.

If you have any questions, please contact us.

Sincerely,
GEORGE P. ABATE
Napa County Assessor
HAROLD M. HALE, JR.
Auditor-Appraiser

HMH:lp
Encl.

it to the referee or take any other action with respect to it. On July 21, 1976, five months subsequent to the expiration of the time for filing a proof of claim, the County filed an application for leave to file a claim. The bankruptcy judge denied this motion on October 27, 1976. The County thereafter appealed to the district court which reversed the order of the bankruptcy court, and ordered that the County be permitted to file an amended proof of claim. The trustee appeals from this judgment.

We have long applied the so-called rule of "liberality in amendments," *In re Patterson-MacDonald Shipbldg. Co.*, 293 F. 190, 191 (9th Cir. 1923); *Sun Basin Lumber Co. v. United States*, 432 F.2d 48, 49 (9th Cir. 1970) (per curiam). We must now decide whether delivery of the County's letter to the trustee meets this test.

In re Patterson-MacDonald Shipbldg. Co., supra, presented circumstances virtually identical to those of the case now before us. We held that the letter sent to the trustee in that case was sufficient to allow for amendment. We believe that, although the County's letter is neither as precise, nor perhaps as pointed, as that which we allowed in *Patterson-MacDonald*, it, together with the enclosed tax bills, is a statement in writing that is signed by an agent of the creditor, and, "reasonably construed," sets forth the claim, the "consideration" (or "ground of liability," Official Form 15) therefor, that no payments have been made thereon, and that the sum is justly owing. The letter thus contains much of the pertinent information required by relevant statute, 11 U.S.C. § 93(a), Bankruptcy Rule, 301(a), and Official Form, 15. The question before us, of course, is not whether the letter sufficed as a formal proof

of claim, but only whether it was sufficient to supply "the substance of a proof of claim, and to warrant amendment to supply the absent items of proof." *In re Patterson-MacDonald Shipbldg. Co., supra,* 293 F. at 192. As we stated in *Sun Basin Lumber Co. v. United States, supra,* "the document or documents timely filed must fairly reflect the existence of a claim against the estate. It is not necessary, however, that the documents constitute a proof of claim." 432 F.2d at 49. " 'whether formal or informal, a claim must show . . . that a demand is made against the estate, and must show the creditor's intention to hold the estate liable.' " *In re Hotel St. James Co.,* 65 F.2d 82, 83 (9th Cir. 1933) (citation omitted). We observed in *Hotel St. James* that while the letter in *Patterson-MacDonald* indicated some intent that it be viewed as a claim against the estate, "there [was] not the slightest indication that the petition [involved in that case—for leave to sell mortgaged premises under a trust indenture] was intended as a claim against the bankrupt estate." 65 F.2d at 83. In the letter sent to the trustee here, as with the documents filed in *Sun Basin,* however, "the intention to collect from the estate was implicit," *Sun Basin Lumber Co. v. United States, supra,* 432 F.2d at 49.

The point simply is that "there must have been presented, within the time limit, by or on behalf of the creditor, some written instrument which brings to the attention of the court the nature and amount of the claim." *Perry v. Certificate Holders of Thrift Savings,* 320 F.2d 584, 590 (9th Cir. 1963).

The trustee next contends that, even if the claim asserted in the County's letter would ordinarily be sufficient to sustain an amendment, the delivery of the letter to the trustee, rather than to the referee or the clerk of the court, precludes amendment here. In *In re Patterson-MacDonald Shipbldg. Co., supra,* 293 F. 190, however, we approved the amendment of a proof of claim that was contained in a letter sent to the trustee. The trustee here nevertheless suggests that language to the effect that the basis for an amendment of a proof of claim must appear " 'upon the record in the bankruptcy proceedings,' " *Sun Basin Lumber Co. v. United States, supra,* 432 F.2d at 49, or must be found in "[the court's] own files," *In re Brill,* 52 F.2d 636, 638 (S.D.N.Y.), *aff'd,* 52 F.2d 639 (2d Cir. 1931) (per curiam), precludes amendment of a claim delivered to the trustee. We cannot agree. *See J.B. Orcutt Co. v. Green,* 204 U.S. 96, 101 (1907); *In re Gibraltor Amusements Ltd., supra,* 315 F.2d at 213; *In re Patterson-MacDonald Shipbldg. Co., supra,* 293 F. at 190-92.

We are not persuaded by the trustee's claims that we will open a "Pandora's Box" and that our decision will prejudice the claims of those creditors who properly filed their formal proofs of claim within the statutory period. First, we are doing no more than maintaining the status quo. There is no great burden on trustees in being required to read and to "reasonably construe" those documents sent to them. Second, we fail to perceive the prejudice which we are purported to cause here. As the trustee once conceded in a letter that he sent to the bankruptcy judge, the County "*advised* [him] that the bankrupt owed taxes" prior to the expiration of the six-month period. (Emphasis in original.) There is thus no allegation that the County is attempting to assert a claim based upon a new cause of action, *see, e.g.,*

Menick v. Hoffman, 205 F.2d 365, 368 (9th Cir. 1953); 3 Collier on Bankruptcy § 57.11[1], at 195. Of course our decision does place one who delivered an amendable, informal proof of claim in the same position as those who have properly filed formal proofs of claims, but we see no more prejudice from this practice now than we did when we decided *Sun Basin Lumber.*

AFFIRMED.

APPENDIX B

11 USC Section 93a

A proof of claim shall consist of a statement in writing and signed by a creditor, setting forth the claim; the consideration therefor; whether any and, if so, what securities are held therefor; and whether any and, if so, what payments have been made thereon; and that the claim is unjustly owing from the bankrupt to the creditor. A proof of claim filed in accordance with the requirements of the Bankruptcy Act, the General Orders of the Supreme Court, and the official forms, even though not verified under oath, shall constitute prima facie evidence of the validity and amount of the claim.

11 USC Section 93n

That all claims shall be proved and filed in the manner provided in this section. Claims which are not filed within six months after the first date set for the first meeting of creditors shall not be allowed.

APPENDIX C

Rule 302.

FILING PROOF OF CLAIM

(a) Manner of Filing. In order for his claim to be allowed, every creditor, including the United States, any state, or any subdivision thereof, must file a proof of claim in accordance with this rule, except as provided in Rules 303 & 304.

(b) Place of Filing. A proof of claim shall be filed in the place prescribed by Rule 509.

(c) Claim Founded on a Writing. When a claim, or an interest in property of the bankrupt securing the claim, is founded on a writing, the original or a duplicate shall be filed with the proof of claim unless the writing has been lost or destroyed. If lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim. If a security interest in property of the bankrupt is claimed, the proof of claim shall be accompanied by satisfactory evidence that the security interest has been perfected.

(d) Times for Filing. A claim must be filed within 6 months after the first date set for the first meeting of creditors, except as follows:

(1) On application before the expiration of such period and for cause shown, the court may grant a reasonable fixed extension of time for filing of a claim by the United States, a state, or subdivision thereof.

Rule 509.

FILING OF PAPERS

(a) Place of filing. A petition commencing a bankruptcy case shall be filed with the clerk of the district court. After reference, all papers, including a petition filed in a pending case and proofs of claim, shall be filed with the referee unless otherwise directed by local rule or by order of the judge.

(b) Notation of Time of Filing. The clerk of the district court shall note on the petition the date and hour of its filing on each paper thereafter filed with him.

(c) Error in Filing. A paper intended to be filed but erroneously delivered to the trustee or receiver, or the attorney for either of them, or to the district judge, referee, or clerk of the district court, shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the proper person. In the interest of justice, the court may order that the paper shall be deemed filed as of the date of its original delivery.

APPENDIX D

United States District Court
Northern District of California
Office of the Clerk
June 6, 1979

Case No.: C 77-0003 WWS
Case Title: FRANCISCAN VINEYARDS
Date Mandate Filed: 6-5-79

TO COUNSEL OF RECORD:

The mandate of the United States Court of Appeals for the Ninth Circuit has been filed in the above captioned case.

Yours very truly,

WILLIAM L. WHITTAKER,
Clerk

/s/ Deborah A. Jay
Case Systems Administrator
Deborah A. Jay

Distribution:
Civil—Counsel of Record
Criminal—Counsel of Record
U. S. Marshall (Copy of Mandate)
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Supreme Court, U.S.
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Respondent,

On Petition for Writ of Certiorari
To the United States Circuit Court of Appeals
For the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

County of Napa, Respondent herein, prays that this Court not grant the Writ of Certiorari sought by Petitioner, William B. Grover.

OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit (Petitioner's Appendix A) is reported at 597 F. 2d 181.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTIONS PRESENTED

May an informal claim presented to a Trustee in Bankruptcy be amended to formal status after the conclusion of the claims filing period.

STATEMENT

The facts of the case are adequately set forth in the decision of the Circuit Court of Appeals (Petitioner's Appendix A) at pages A-2 and A-3.

ARGUMENT

There is no conflict among the Circuits involving the issues raised by the Petition. The Ninth Circuit applied the long standing rule permitting liberal amendment of informal claims. That rule permits a claimant to amend an informal claim to bring it into compliance with the Bankruptcy Rules. The amendment may occur after the time for the filing of claims has expired.

The opinions of the Circuit Courts are in accord that an informal claim may be amended after the conclusion of the claims filing period. Illustrative cases upholding the amendment procedure include the following:

In re Faulkner, 161 F 900 (8th Cir.); *Fausett v. Murner*, 402 F.2d 961 (9th Cir.); *Fyne v. Atlas Supply Co.*, 245 F.2d 107 (4th Cir.); *In re Lipman*, 65 F.2d 366 (2d Cir.); and *Sun Basin Lumber Co. v. United States*, 432 F.2d 48 (9th Cir.).

Petitioner attempts unsuccessfully to manufacture a conflict among the Fourth, Eighth, and Ninth Circuits by citing *Fyne v. Atlas Supply Co., supra,* and *In re Uhlenhopp,* 508 F.2d 412 (8th Cir.) in possible opposition to the Ninth Circuit's present position.

The Fourth and Eighth Circuit cases cited by Petitioner are in accord with the Ninth Circuit opinion in this case. *Fyne v. Atlas Supply Co., supra,* the Fourth Circuit case, upholds amendment of an informal claim after close of the claims filing period. As is true in this case, documentation of the underlying debt, which was the basis of the claim, existed in correspondence between the trustee and the claimant. The Court determined the documentation to be an informal claim, susceptible of amendment after the time for filing claims had expired.

In re Uhlenhopp, supra, the Eighth Circuit case cited by Petitioner, again upholds amendment where an informal claim evidencing the underlying debt was on file.

CONCLUSION

Petitioner has failed to show a conflict among the Circuits relating to Bankruptcy claims filing. In fact, Petitioner cannot point to any Circuit Court opinion in which amendment of an informal claim has been denied, where that claim was evidenced by a written memorandum filed within the claims filing period.

Petitioner is seeking to overturn a rule followed uniformly for many years. His Petition for Writ of Certiorari should be denied.

January 28, 1980

Respectfully submitted,

MALCOLM A. MACKENZIE
Attorney for Respondent